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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT EXAMINING OPERATION

Technology Center 2100

In re Application of:
Warren F. Schmalenberger

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Atty. Docket No.: SCHC,002

Serial No.: 09/442,819

Filed: November 18, 1999

Titled: **CAPITAL
MARKET INDEX**

Examiner: D.S. Felten

Group Art Unit: 2164

COMMISSIONER OF PATENTS
P. O. BOX 1450
ALEXANDRIA, VA 22313-1450

CERTIFICATE OF MAILING (37 CFR 1.8a)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date indicated below with sufficient postage as first class mail in an envelope addressed to the Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Mark H. Wisner, Registration No. 30,603

July 20, 2005

Date

**COMMUNICATION TRANSMITTING SECOND COPY
OF RESPONSE TO OFFICIAL ACTION OF MARCH 21, 2002**

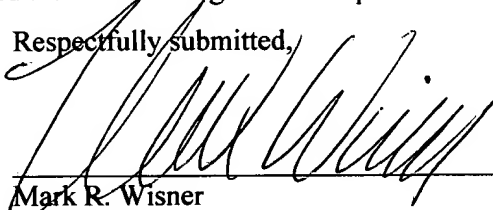
Dear Sir:

By telephone conversation with the Examiner of the captioned application earlier in this month of July, Applicant learned that although the Office's computers show that a response to the March 21, 2002 Official Action was received by the Office, the application has not been examined further since the March 21, 2002 Action was mailed by the Office. The Examiner suggested on the phone that the lack of progress in the time since the Response was received by the Office may have been the result of the loss of the Response somewhere between the Office's mail room and the Examining Group, and he asked that another copy of the Response be sent to the Office. Applicant is therefore enclosing a second copy of the Response to Official Action of March 21, 2002 as filed (with a properly executed certificate of mailing) on September 23, 2002. To complete the Office's records, the Response was also filed with a Request for Extension of Time and a Transmittal, and copies of both of those documents are also enclosed. Although not necessary since the Office's computers show that it was received, Applicant also encloses a photocopy of the postcard that was sent along with the Response to Official Action of March 21, 2002 showing the date stamp of the Office thereon.

Because the Response to Official Action of March 21, 2002 apparently was not entered into the application file when it was received by the Office, it is respectfully requested that the

enclosed copy of that Response be entered into the file and that examination of the application proceed at this time. It is also respectfully requested that the enclosed Notice of Change of Correspondence Address be entered into the file at this time. Applicant does not understand that there should be any charge for filing this Communication, but in the event a fee is assessed, the Commissioner is authorized to charge Deposit Account No. 50-0965 (SCHC,002) in the amount of any necessary fee. In the unforeseen event that there are questions regarding this application, it is respectfully requested that Applicant's counsel be contacted at the address and telephone number set out below and in the enclosed Notice of Change of Correspondence Address.

Respectfully submitted,



Mark R. Wisner

Registration No. 30,603

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Houston, Texas 77027-9012

Telephone: (713) 785-0555

Facsimile: (713) 785-0561

ATTORNEY FOR APPLICANT(S)

Date: July 20, 2005



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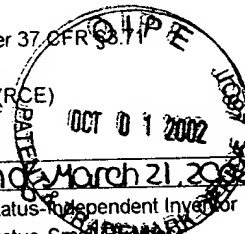
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Technology Center 2100

☒ ☐
DOCKET NO.: SCHC002
SERIAL NO.: 09/442,819
FILED: November 18, 1999
APPLICANT: Schmalenberger

The Patent & Trademark Office acknowledges receipt of, and has stamped hereon the date of receipt of, the items checked below, which were mailed on September 23, 2002

- ☐ Affidavit
☐ Appeal - ☐ Notice ☐ Brief
☐ Patent Application ☐ Utility ☐ Provisional
Cover Sheet (___ page) Specification (___ pages)
Claims (___ pages) Total Claims ___ Indep. Claims ___
Abstract: (___ pages) Oath ☐ Declaration ☐ Unexecuted ☐
☐ ___ Sheets of Drawing(s) Formal ☐ Informal ☐
☐ Assignment and Recordation Cover Sheet
☐ Declaration (including Power of Attorney ☐)
☐ Information Disclosure Stmt - Form 1449 (with ___ references)
☐ Issue Fee \$ ___ ☐ Pub Fee \$ ___ ☐ Copies (___) \$ ___
☒ Letter, Transmittal
☐ Power of Attorney
☐ Power of Attorney with Election Under 37 CFR §3.71
☐ Certificate Under 37 CFR §3.73
☐ Request for Continued Examination (RCE)
☒ Request for Extension of Time
☐ Request for ___
☒ Response to Official Action of March 21, 2002
☐ Verified Statement of Small Entity Status-Independent Inventor
☐ Verified Statement of Small Entity Status-Small Business
☒ Check # 1697 in the amount of \$ 478.00
☐ Check # ___ in the amount of \$ ___
☒ Other: Attachment to Response (4 pages)
☐ Other: _____
☐ Other: _____



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In re Application of:
Warren F. Schmalenberger§
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Atty. Docket No.: SCHC,002

Serial No.: 09/442,819

Filed: November 18, 1999

Examiner: D.S. Felten

Titled: **CAPITAL
MARKET INDEX**

Group Art Unit: 2164

COPYCOMMISSIONER OF PATENTS
AND TRADEMARKS
WASHINGTON, D.C. 20231**CERTIFICATE OF MAILING (37 CFR 1.8a)**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date indicated below with sufficient postage as first class mail in an envelope addressed to the Commissioner of Patent and Trademarks, Washington, D.C. 20231.

Mark R. Wisner, Registration No. 30,603

September 23, 2002
Date**TRANSMITTAL OF AMENDMENT**

Transmitted herewith is an amendment in the above-identified application.

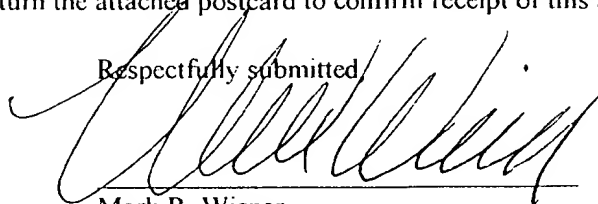
The fee has been calculated as shown below:

FOR	CLAIMS PAID FOR	TOTAL CLAIMS	EXTRA CLAIMS	RATE	TOTAL
Total Claims	25	27	2	\$18 / \$9	\$ 18.00
Independent Claims	3	3	- 0 -	\$84/\$42	\$ - 0 -
TOTAL FEE DUE:					\$ 18.00

- ☐ Please refund any overpayment.
- ☒ A check in the amount of \$478.00, which includes the \$18.00 fee for two additional dependent claims and the \$460.00 fee for a three month extension of time, is enclosed.
- ☒ A (Three Month) Request for Extension of Time is enclosed (the required fee of \$460.00 is included in the enclosed check).
- ☒ The Commissioner of Patents is hereby authorized to draw on the Deposit Account of Wisner & Associates, Account No. 50-0965 (SCHC,002), if there are charges for entry of the enclosed amendment, if the accompanying check is insufficient, or if the check is inadvertently not attached to this paper.

☒ Please date stamp and return the attached postcard to confirm receipt of this amendment.

Respectfully submitted



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ATTORNEY FOR APPLICANT

Date: September 23, 2002



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Warren F. Schmalenberger

Serial No.: 09/442,819

Filed: November 18, 1999

Titled: **CAPITAL
MARKET INDEX**

§ Atty. Docket No.: SCHC,002
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§ Examiner: D.S. Felten
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§ Group Art Unit: 2764
§

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WASHINGTON, D.C. 20231

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Mark R. Wisner, Registration No. 30,603

September 23, 2002
Date

RESPONSE TO OFFICIAL ACTION OF MARCH 21, 2002

Sir:

Applicant responds to the Official Action of March 21, 2002 in the captioned application as follows. Also enclosed is a request for a three month extension of the time to respond and a check for the required fee. In the event the certificate of mailing on either document was either inadvertently not executed or improperly executed, any necessary fees were not included and/or were insufficient in amount, or for any other reason this Response is not considered timely filed, request is hereby made for an extension of the time to respond for the period necessary to ensure consideration of this Response and the Commissioner is authorized to charge the Deposit Account of Wisner & Associates, Account No. 50-0965 (SCHC,002) in the amount of any necessary fee.

IN THE TITLE

Please amend the title of the application to read as follows: --SYSTEM AND METHOD FOR COMPUTING A CAPITAL MARKET INDEX BASED ON WEIGHTED MARKET SECTOR INDICES--.

IN THE CLAIMS

Please rewrite the following claim(s) (in accordance with the requirements of 37 C.F.R. 1.12(c)(iii), another version of the rewritten claim(s), on one or more pages separate from this amendment and marked up to show all the changes relative to the previous version of that claim(s), is attached) to read as follows:

1. A method of arranging the capital market securities within a country into a single index which approximates the activities of the securities in the marketplace comprising the steps of:

- obtaining a current index of each of the stock, bond, and money market sectors of the marketplace in a country;
- computing a weighting factor for each said index;
- applying each said weighting factor to each said index to compute weighted indexes for each of the stock, bond, and money market sectors; and
- calculating a capital market index within the country by combining said weighted indexes.

7. A method of arranging the capital market securities within a country into a single index which approximates the activities of the securities in the marketplace comprising the steps of:

- determining a stock index for a country;
- determining a bond index for the country;
- determining a money market index for the country;
- computing a weighting factor for each said index;
- applying said weighting factor to each said index to compute corresponding weighted indexes; and
- calculating a capital market index for the country by combining said weighted indexes.

8. The method of claim 7 in which said stock index is computed by assembling a stock portfolio, said stock portfolio comprised of either all or a selected portion of all marketable equity securities; calculating the present day market value for said marketable equity securities, said market value calculated by multiplying the number of outstanding shares of said marketable equity securities by the price at said present day; calculating the market capitalization of said stock portfolio by summing the market values of said marketable equity securities; selecting an initial period divisor; and calculating the equity market index by dividing said market capitalization by the initial period divisor.

9. The method of claim 8 in which said stock portfolio is assembled by computing the market capitalization of each individual stock comprising said stock portfolio by multiplying the number of outstanding shares of each individual stock by the price of each individual stock; arranging said stocks into industry groups; and selecting a

representative number of market capitalizations for said stocks from each said industry group.

10. The method of claim 8 wherein said stock portfolio is assembled by computing the market capitalization of each individual stock by multiplying the number of outstanding shares of each individual stock by the price of each individual stock; selecting 90% of the 500 largest capitalized stocks; and selecting 10% of the smallest cap stocks.

11. The method of claim 7 in which said bond index is determined by assembling a bond portfolio comprised of one or more of the following securities:

- all of the U.S. Treasury and federal agency issues with maturity in excess of one year,

- the most recent investment grade corporate bonds with representation by maturity of \$100 million minimum,

- representative and liquid (or daily traded) mortgage-backed securities, and
- representative asset-backed securities;

calculating the present day market value of said bond portfolio by multiplying the present day price of each security by the amount of each security outstanding after prepayment and repurchases and adding the amount of interest each security has accrued; summing the market value of the individual securities; selecting an initial period divisor; and calculating the bond market index by dividing said present day market value by said initial period divisor.

12. The method of claim 11 wherein said bond portfolio further comprises high yield bonds and municipal securities.

13. The method of claim 7 wherein said money market index is determined by assembling a money market portfolio comprised of one or more of the following instruments:

- 100% of the U.S. Treasury and Federal Agency Issues with a maturity of less than one year,

- the most recent commercial paper (dealer and directly replaced),

- the banker's acceptances with representation by maturity, and

- corporate issues with a maturity of less than one year;

calculating the present day market value of each instrument in said money market portfolio by multiplying the present day price of each said instrument by the amount outstanding after prepayments and repurchases and adding accrued interest of each instrument;

computing the total market value of the money market portfolio by summing the market value of the individual instruments; selecting an initial period divisor; and calculating the money market index by dividing said present day market value by said initial period divisor.

18. The method of claim 7 wherein said weighting factor indexes are calculated by obtaining the Bond Index Market Value, the Equity Index Market Value and the Money Market Index Value; computing the weighting factor divisor, said weighting factor divisor being the sum of the Bond Index Market Value, the Equity Index Market Value, and the Money Market Index Value; and computing the weighting factors by dividing each said index by said weighting factor divisor.

21. The method of claim 7 additionally comprising recalculating the index as the government revises earlier released data for research and analytical use by obtaining revised government data regarding earlier released data relevant to securities used in the generation of the market index.

Please add the following new claims:

26. The method of claim 1 additionally comprising managing a portfolio.

27. The method of claim 7 additionally comprising managing a portfolio.

REMARKS

In the Official Action of March 21, 2002, the Examiner suggested that the title of the invention was not descriptive and rejected claims 1-25 under 35 U.S.C. 103(a) as being unpatentable over Barr, *et al.* (hereinafter "Barr"), U.S. Patent No. 5,761,422, in view of Khorana, A., "The Emergence of Country Index Funds," Journal of Portfolio Management; New York; Summer 1998 (hereinafter "Khorana").

In response to the objection to the title of the application, the application has been amended to adopt the title suggested in the Action except that the word "International" suggested in the Action was not utilized in the amended title because the method of the present invention may be utilized country-by-country and/or internationally. The prior art rejection, however, is respectfully traversed for the following reasons.

Page 2 of the Action alleges that

"Barr discloses a computer data processing system and method for selecting securities, and constructing an investment portfolio through neural net tracking. The [Barr] system creates a hybrid index 100 by taking the average of two separate indexes (S&P 500 and S&P 400 midcap index returns) as well as other market data."

The Action notes that Barr fails to disclose obtaining (or using) a current index of stock, bond, and money market sectors of the market place and computing a weighting factor for each index as recited in the claims of the present application and then cites Khorana's disclosure of the use of World Equity Benchmark Shares (WEBS) as an international indexing instrument for the proposition that WEBS provide a current set of indexes of mutual funds which may represent various sectors of the marketplace. The Action then continues, however, by making allegations as to the combination of Khorana with Bloom, U.S. Patent No. 6,061,663 (hereinafter "Bloom"), not Barr, stating that

"It would have been obvious for an artisan of ordinary skill at the time of the invention to integrate the method disclosed in Khorana because an artisan of ordinary skill in the art would recognize that the use of WEBS in the Bloom system would greatly increase its usage to an international scale, as well as a broader market. Thus, such a modification would allow a more diversified level of indexing a classification of securities, and thus would be an obvious expedient to one of ordinary skill in the art."

The Action continues on page 4 with a list of relevant prior art, and Bloom heads the list. This switch from Barr to Bloom is so confusing that the §103 rejection is respectfully traversed for this reason alone. Reconsideration and withdrawal of this rejection over the combination of Bloom (or Barr?) and Khorana is respectfully requested or, at a minimum, it is requested that the rejection be clarified so that Applicant has an adequate opportunity for response.

However, before any such rejection is set out in a subsequent action, it is respectfully noted that even a combination of all three references does not meet the criteria required to make a *prima facie* showing of the obviousness of the differences between these references and the claims as required by MPEP §706.02(j), paragraph 2. This section of the MPEP, in pertinent part, states that three criteria must be met to establish a *prima facie* showing of obviousness:

- (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings;
- (2) there must be a reasonable expectation of success that the combination will be an effective improvement; and
- (3) the prior art references, when combined, must teach or suggest all the claim limitations.

MPEP §2143 adds that the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not in applicant's

disclosure. No such showing can be established for the present claims on the basis of any of these three references, alone or in combination.

With respect to the first of the three criteria for establishing a *prima facie* obviousness rejection, there is no suggestion in Barr, Bloom or Khorana to make the combination that is alleged to have been obvious to one skilled in the art. Indeed, Khorana presents a comparison of specific equity indexes (World Equity Benchmark Shares provided by the American Stock Exchange) related to other equity indexes to suggest improvements in decision making about asset allocation. There is no suggestion of treatment of equities or their market parameters to attain the weighting methods of the instant invention. In fact, it may be argued that Khorana teaches away from the instant invention both by presenting a closed system of only equities and structuring his comments as a comparison, which by its nature is a closed system.

Bloom does recite a method for stock index re-balancing (col. 1) but does not recite combinations with other capital markets. Bloom's technique cannot be applied to other capital markets or securities including, but not limited to, treasury bonds or securities, federal government mortgages, real estate related investments, e.g., Real Estate Investment Trusts or federally related mortgage pools as comprehended in the instant invention. The securities environment disclosed by Bloom is closed and there is no suggestion about how to extrapolate Bloom's method to other markets. No suggestion of combining Bloom's teachings with Khorana's comparison techniques would be likely occur to one skilled in the art because the systems addressed are so dissimilar, the analytic techniques inapposite, and the techniques for composing indexes so disparate. These differences arise from the different kinds of securities being treated, the widely different methods of treatment and the different aims of the various references as distinguished from the instant invention.

Barr, similarly, does not recite utilization of securities other than stocks and, as noted in the Action, fails to disclose obtaining a current index of stock, bond and money market sectors and computing a weighted factor for each index. Nor does Barr address treasury bonds or securities, federal government mortgages, real estate related investments, e.g., Real Estate Investment Trusts or federally related mortgage pools. Instead, Barr discloses a data processing system and method for selecting securities and constructing an investment portfolio based on a set of neural networks trained by using a number of price and volume history input parameters derived from the securities market performance data. The Barr method combines the expected return/appreciation potential data for each security via an optimization process applied to a portfolio that satisfies predetermined aggregate statistics. The Barr system receives market data and attempts to estimate the

appreciation potential of the participating securities. The system utilizes neural "nets," which have the ability to "learn," that is, *inter alia*, examine data in the light of past performance and predict trends.

Whereas the calculations in Barr's method are derived by a neural net training method which attempts to discern patterns in the target data set, the instant invention uses government and market data to determine the weights of system components. The method claimed in the present application then measures the relative and combined performance of said components.

The stock selection process utilized in Barr uses a neural net for each stock in a given capital market. This selection process involves a dynamical process in which the organization of the network (the structure of its connectivity) is modified on the basis of the interaction of the network with external stimuli. The variations of neural networks are based on attractor neural networks—a network of interacting formal neurons (mathematical constructs that are computer based), with a high degree of feedback, whose dynamics are governed at long times by attractors. An attractor is a special network state, or a restricted set of states, to which the dynamical process governing the time evolution of the network brings the network, after a long enough time, from large classes of initial network states.

The acural neural networks utilized by Barr follow the same essential principals. These nets provide the capability to capture non-linear functional relationships among variables among input variables which are not easily modeled or captured by more traditional methods of security analysis and selection such as multifactor models based on linear relationships. (Barr, col. 3, lines 58, *et seq.*). Unfortunately, the choice of sets from which to select input data and its subsequent treatment using net criterion functions and calculations is highly specialized and is not easy to adapt, and at times, is not possible to adapt to include data sets with different properties. This difficulty makes it less likely that one of ordinary skill in the art would be successful in making a combination with Khorana to, as suggested in the Action, internationalize the teaching of Barr and to extrapolate the Barr techniques to other kinds of securities. Barr continues (col. 4, line 20) by stating that "following the selection of input indicators; each net is trained with the available historical data. The training process continues until at least one stopping criterion is met. Such criteria include the determination that the connections between the nodes of the net have reached a steady state, the error between the predicted output and the actual target values is less than a certain threshold, or that a predetermined time period has elapsed without any improvement in the net's performance." The instant invention has none of these explicit limitations in its fundamental construct.

Further, there is no suggestion in Barr as to how the method described in that reference could be applied to other types of securities such as those recited in the claims of the present application that list data sets with widely differing structures that may have disparate characteristics that are not at all similar to the historical data used in Barr. More critically, Barr does not provide a sufficient explanation to enable one skilled in the art to attempt to extrapolate the method to securities with markedly different properties than the stocks that Barr analyzes. For instance, at col. 8, line 29, Barr explains the steps required to generate the data for use as input to the net for a given stock. Part of this explanation cites source examples for variables required for the calculation. For many of the securities treated in the instant invention, no comparable data source exists.

Hypothetically, suppose one skilled in the art was able to collect data on all the securities that are considered in the instant invention. It is clear that the data sets would have wide variance in their characteristics. This wide variance means that the required net training that is the subject of Barr would be much more difficult to achieve, the stop points more arbitrary, the time to reach steady state between the nodes longer, and the error between the predicted output and the actual target values more difficult to drive to a desired level or that the predetermined time period used to wait to see that the net's performance has converged to a steady state would be so long as to be impractical. Part of this impracticality is due to the fact that as more nodes are added to the net, with the addition of more securities, the number of connections increases factorially (essentially exponentially). The computational power to handle the behemoth training matrix for all the different kinds of securities and their individual numbers would be difficult to achieve and possibly prohibitively expensive.

For these reasons, one skilled in the art stands little if any possibility of success in making a combination to "internationalize" parameters that could be compared to the full range of indexes claimed in the instant invention. If there is no likelihood of success, it is respectfully submitted that no *prima facie* showing of the obviousness of the differences between the claimed invention and the cited art has been established and that the §103 rejection is therefore inappropriate.

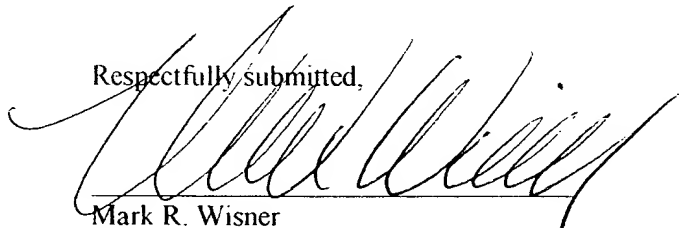
Finally, apart from the lack of any motivation or suggestion in the cited references to modify either reference to combine teachings, and apart from the lack of any possibility of success in combining elements, there is no teaching in Barr, Bloom, and/or Khorana, alone or in combination, of all the claimed elements of the instant invention. There is, for instance, no teaching in any of the cited references of using more than one security (regardless of whether it is equity, bond, and/or money market securities) in a method for producing an index for

approximating the activities of the securities in the marketplace as recited in the claims. Barr does not even teach obtaining a current index or an index for either of bond or money market securities. Nor does Barr teach the combining of weighted indexes as recited in the claims. Nor does Khorana teach looking at any securities other than equities. Further, Khorana does not teach weighting at all. In short, there are many differences between the claims of the present application and the cited references such that this third requirement for making out a *prima facie* showing of the differences has not been met in the Action.

Applicant has amended several of the claims to correct some inadvertent errors and to clarify those claims. New claims 26-27 have been added to more specifically define that which Applicant regards as his invention.

Entry of the claim amendments set out above as well as new claims 26-27, reconsideration and withdrawal of the §103 rejection in light of the lack of a showing of *prima facie* obviousness, allowance of the claims, and passage of the application to issuance are all respectfully requested. In the unforeseen event that there are questions and/or issues yet to be answered in this application, it is respectfully requested that Applicant's Attorney be contacted at the address and phone number set out below.

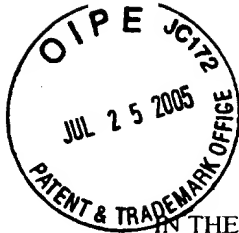
Respectfully submitted,



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ATTORNEY FOR APPLICANT

Date: September 23, 2002



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In re Application of: § Atty. Docket No.: SCHC,002
Warren F. Schmalenberger §
Serial No.: 09/442,819 §
Filed: November 18, 1999 § Examiner: D.S. Felten
Titled: **CAPITAL** § Group Art Unit: 2164
MARKET INDEX §

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September 23, 2002
Mark R. Wisner, Registration No. 30,603 Date

**ATTACHMENT TO RESPONSE TO
OFFICIAL ACTION OF MARCH 21, 2002**

Dear Sir:

In accordance with the requirements of 37 C.F.R. 1.121, Applicant hereby submits versions of any replacement or added paragraphs of the captioned application, as well as any rewritten claims, on one or more pages separate from the amendment, marked up to show all the changes relative to the previous version of the paragraph(s) and/or claim(s).

IN THE CLAIMS

Claim(s) 1, 7-13, 18, and 21 was/were rewritten as follows:

1. (Amended) A method of arranging the capital market securities within a country into a single index which approximates the activities of the securities in the marketplace[, the method] comprising the steps of:

obtaining a current index of each of the stock, bond, and money market sectors of the marketplace in a country;

computing a weighting factor for each said index;

applying each said weighting factor to each said index to compute weighted indexes for each of the stock, bond, and money market sectors; and

calculating a capital market index within the country by combining said weighted indexes[, said capital market index for use as a portfolio manager].

7. (Amended) A method of arranging the capital market securities within a country into a single index which approximates the activities of the securities in the marketplace[, the method] comprising the steps of:

determining a stock index for a country;

determining a bond index for the country;

determining a money market index for the country;

computing a weighting factor for each said index;

applying said weighting factor to each said index to compute corresponding weighted indexes; and

calculating a capital market index by combining said weighted indexes[, said capital market index for use as a portfolio manager].

8. (Amended) The method of claim 7 in which [the] said stock index is computed by assembling a stock portfolio, said stock portfolio comprised of either all or a selected portion of all marketable equity securities; calculating the present day market value for [each] said marketable equity securities, said market value calculated by multiplying the number of outstanding shares of [each assembled] said marketable equity securities by the price at said present day; calculating the market capitalization of said stock portfolio by summing the market values of [each assembled] said marketable equity [security] securities; selecting an initial period divisor; and calculating the equity market index by dividing said market capitalization by the initial period divisor.

9. (Amended) The method of claim 8 in which [the] said stock portfolio is assembled by computing the market capitalization of each individual stock[, said market capitalization computed] comprising said stock portfolio by multiplying the number of outstanding shares of each individual stock by the price of each individual stock; arranging said stocks into industry groups; and selecting a representative number of market capitalizations for said stocks from each said industry group.

10. (Amended) The method of claim 8 wherein [the] said stock portfolio is assembled by computing the market capitalization of each individual stock[, said market capitalization computed] by multiplying the number of outstanding shares of each individual stock by the price of each individual stock; selecting 90% of the 500 largest capitalized stocks; and selecting 10% of the smallest cap stocks.

11. (Amended) The method of claim 7 in which [the] said bond index is determined by assembling a bond portfolio[, said bond portfolio] comprised of one or more of the following securities:

all of the U.S. Treasury and federal agency issues with maturity in excess of one year,

the most recent investment grade corporate bonds with representation by maturity of \$100 million minimum,

representative and liquid (or daily traded) mortgage-backed securities, and

representative asset backed securities;

calculating the present day market value of [the selected] said bond portfolio[, said present day market value computed] by multiplying the present day price of each security by the amount of each [bond] security outstanding after prepayment and repurchases and adding the amount of interest each [bond] security has accrued; summing the market value of the individual [bonds] securities; selecting an initial period divisor; and calculating the bond market index by dividing said present day market value by [the] said initial period divisor.

12. (Amended) The method of claim 11 wherein [the stock] said bond portfolio further comprises high yield bonds and municipal securities.

13. (Amended) The method of claim 7 wherein [the] said money market index is determined by [selecting the] assembling a money market portfolio[, said portfolio] comprised of one or more of the following instruments:

100% of the U.S. Treasury and Federal Agency Issues with a maturity of less than one year,

the most recent commercial paper (dealer and directly replaced),

the banker's acceptances with representation by maturity, and

corporate issues with a maturity of less than one year;

calculating the present day market value of each instrument in said money market portfolio by multiplying the present day price of each said instrument by the amount outstanding after prepayments and repurchases and adding accrued interest of each instrument; computing the total market value of the money market portfolio by summing the market value of the individual instruments; selecting an initial period divisor; and calculating the money market index by dividing said present day market value by [the] said initial period divisor.

18. (Amended) The method of claim 7 wherein said weighting factor indexes are calculated by [computing] obtaining the Bond Index Market Value, the Equity Index Market Value

and the Money Market Index Value; computing the weighting factor divisor, said weighting factor divisor being the sum of the Bond Index Market Value, the Equity Index Market Value, and the Money Market Index Value; and computing the weighting factors by dividing each said index by said weighting factor divisor.

21. (Amended) The method of claim 7 [in which] additionally comprising recalculating the index [is recalculated] as the government revises earlier released data for research and analytical use by obtaining revised government data regarding earlier released data relevant to securities used in the generation of the market index[; recalculating the index at the earlier date; and computing a revised index at each subsequent time period leading to the present].



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THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Warren F. Schmalenberger

Serial No.: 09/442,819

Filed: November 18, 1999

Titled: **CAPITAL
MARKET INDEX**

§ Atty. Docket No.: SCHC,002
§
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§ Examiner: D.S. Felten
§
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§ Group Art Unit: 2164
§

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CERTIFICATE OF MAILING (37 CFR 1.8a)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date indicated below with sufficient postage as first class mail in an envelope addressed to the Commissioner of Patent and Trademarks, Washington, D.C. 20231.

Mark R. Wisner, Registration No. 30,603

September 23, 2002
Date

REQUEST FOR EXTENSION OF TIME

Sir:

Applicant respectfully requests an extension of the period in which to respond to the outstanding Official Action of March 21, 2002 in the above-identified case for three (3) months. A check which includes the required \$460.00 fee for the requested three month extension of time is enclosed. In the event the check is inadvertently omitted, is unsigned, or is insufficient in amount, the Commissioner is authorized to charge any necessary fees, or credit overpayment, to the Deposit Account of Wisner & Associates, Account No. 50-0965 (SCHC,002).

Respectfully submitted,

Mark R. Wisner

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Date: September 23, 2002